IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT:

**THE HON'BLE SRI JUSTICE K.C. BHANU**

**WRIT PETITION No.5108 OF 2001**

Between:

P. Nageswararao, S/o. Venkataswamy,

Hindu, aged about 33 years,

R/o. Chirala, Prakasam District.

**..... PETITIONER**

**AND**

1) The Superintending Engineer,

S.P.D.C. of A.P. Ltd., Ongole.

2) The Assistant Accounts Officer,

(E.R.O.) Chirala, Prakasam District.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction in the nature of Mandamus, declaring the proceedings of the first respondent herein in Memo No.SE(O)/OGL/Adm-JAO/D.No.4136/2000, dated 19-08-2000, refusing to treat the period of suspension to dismissal of the petitioner as on duty from 02-06-1992 to 04-11-1997 as L.D.C. in

the office of the 2nd respondent, as being illegal, unjust, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

**Counsel for the Petitioner: Sri E.V. Bhagiratharao, Advocate.**

**Counsel for the Respondents:Sri S. Kishore,S.C. for the Respondents**

**The Court made the following :**

**ORDER**:

This Writ Petition is filed seeking Writ of Mandamus to declare the proceedings of the 1st respondent in Memo No.SE(O)/OGL/Adm-JAO/D.No.4136/2000, dated 19-08-2000, refusing to treat the period of suspension of the petitioner as on duty from 02-06-1992 to 04-11-1997 as L.D.C. in the office of the 2nd respondent, as being illegal, unjust, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

The case of the petitioner is that while he was working in the office of the Assistant Accounts Officer, E.R.O., Chirala, a crime was registered against him for the offence under Section 302 I.P.C. and pending investigation of the crime, he was suspended from service on 02-06-1992. The trial Court after conducting trial by its judgment, dated 04-11-1997, convicted the petitioner for the said offence and sentenced him to imprisonment for life and relying on the said judgment, the respondents herein dismissed the petitioner from service with effect from 04-11-1997. Against the conviction order, the petitioner filed Criminal Appeal No.1465 of 1997 in this Court and a Division Bench of this Court by its judgment, dated 28-07-1999, set aside the judgment of the trial Court and accordingly acquitted the petitioner. On acquittal of the petitioner, he was reinstated into service by the proceedings of the

1st respondent, dated 14-06-2000, and he joined the duty on

16-06-2000 and working as L.D.C. in the office of the

2nd respondent. Thereafter, the petitioner submitted several representations to the respondents requesting them to regularize his services during suspension period i.e. from 02-06-1992 to

04-11-1997 by treating the said period as he was on duty and pay the wages, allowances and other financial benefits due to him, but the same was rejected by the respondents, hence the present writ petition has been filed.

The respondents filed counter affidavit stating that as per the instructions of the A.P.S.E.B./A.P. TRANSCO, the request of the petitioner cannot be considered, hence prayed to dismiss the writ petition.

Learned counsel for the petitioner contends that the conviction and the sentence recorded by the trial Court under Section 302 I.P.C. against the petitioner has been set aside by this Court and was acquitted for the said charge and thereafter he was reinstated into service, therefore the suspension period of the petitioner from 02-06-1992 to 04-11-1997 may be treated as the petitioner was on duty. Hence, he prays to allow the writ petition.

On the other hand, learned standing counsel for the respondents contends that since the petitioner was convicted for the offence under Section 302 I.P.C., he was dismissed from service, and after his acquittal, the period from the date of his dismissal till reinstatement into service was treated as
dies non. Therefore, the petitioner was directed to submit the leave application to regularize the said period by sanctioning the leave to which he is eligible and the respondents have to take an appropriate decision on the said application in accordance with the rules governing the service conditions of the petitioner, since the petitioner was admittedly under suspension from 02-06-1992 to 04-11-1997.

The period, from the date of dismissal till reinstatement into service of the petitioner was already treated as dies-non, therefore the suspension period i.e. from 02-06-1992 to 04-11-1997 has to be regularised so as to enable the petitioner to get all the pensionary benefits. Therefore, the petitioner is permitted to make an application to the respondents and the respondents are directed to consider the same and sanction the leave that is available to the credit of the petitioner, in accordance with law.

With the above direction, the Writ Petition is disposed of without any order as to costs.

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K.C. BHANU, J

Date: 05-07-2005.

PV

To

1) The Superintending Engineer,

S.P.D.C. of A.P. Ltd., Ongole.

2) The Assistant Accounts Officer,

(E.R.O.) Chirala, Prakasam District.

3) Two C.D. copies.